

[Parties and Counsel Listed on Signature Pages]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY PRODUCTS
LIABILITY LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR (PHK)

**AGENDA AND JOINT STATEMENT
FOR MAY 17, 2024, CASE
MANAGEMENT CONFERENCE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to Case Management Order (“CMO”) No. 1 (ECF 75), the Parties submit this agenda and joint statement in advance of the May 17, 2024, Case Management Conference (“CMC”).

I. Update on Pending Motions

A. Motion to Dismiss Personal Injury Plaintiffs’ Claims Against Mark Zuckerberg

On April 15, 2024, the Court issued an order granting Defendant Mark Zuckerberg’s motion to dismiss 25 Personal Injury (“PI”) Plaintiffs’ claims against him in his individual capacity, with leave to amend (ECF 518). *See* ECF 753. On April 26, 2024, pursuant to Case Management Order No. 13, ECF 780 (“CMO 13”), these 25 PI Plaintiffs filed a consolidated addendum to their complaints. *See* ECF 794. Defendant’s motion to dismiss is due on May 10, 2024, the PI Plaintiffs’ opposition is due on May 23, 2024, and Defendant’s reply is due on May 30, 2024. *See* CMO 13 (ECF 780).

B. Motion to Dismiss Certain Non-Priority Claims of PI Plaintiffs

On December 22, 2023, Defendants moved to dismiss the PI Plaintiffs’ remaining “non-priority claims” (Counts 5, 12, 14, 16–18) asserted in the PI Plaintiffs’ Second Amended Master Complaint. *See* ECF 516. The PI Plaintiffs filed their opposition on February 5, 2024. *See* ECF 597. Defendants filed their reply on February 26, 2024. *See* ECF 644. The Defendants and PI Plaintiffs will be prepared to argue this motion at the June 21, 2024, hearing. *See* ECF 728, CMO No. 12 at 6 (setting hearing).

C. Motion to Dismiss AG Complaints, Consumer Protection Claims, and Misrepresentation Claims

On April 19, 2024, the Court heard argument on Meta’s motion to dismiss the Multistate Attorneys General (“AGs”) Complaint, the Florida AG’s Complaint, and the PI Plaintiffs’ Consumer Protection and Misrepresentation Claims (Counts 7-9). *See* ECF 517.¹ Florida filed an Amended Complaint on April 29, 2024 (*see* Case 4:23-cv-05885-YGR, ECF 23) and a *Lexecon* objection on April 25, 2024 (*see* Case 4:23-cv-05885-YGR, ECF 22).

D. Motion to Dismiss Claims Asserted in Certain PI Plaintiffs’ SFCs Against Snap

On January 12, 2024, Defendant Snap moved to dismiss claims under 18 U.S.C. §§ 2252 and 2252A (also known as the “Identified Counts”) asserted in certain PI Plaintiffs’ amended Short-Form Complaints pursuant to CMO No. 7 (ECF 479). *See* ECF 533. Those PI Plaintiffs filed their opposition on February 5, 2024. ECF 598. Defendant Snap filed its reply on February 15, 2024. ECF 613. The PI Plaintiffs and Snap will be prepared to argue this motion at the June 21, 2024, hearing. *See* ECF 728, CMO No. 12 at 6 (setting hearing).

E. Motion to Dismiss School District and Local Government Entity Plaintiffs’ Master Complaint

On February 5, 2024, Defendants moved to dismiss the claims asserted in the School District and Local Government Entity (“SD/GE”) Plaintiffs’ Master Complaint (ECF 504). *See* ECF 601. The SD/GE Plaintiffs filed their opposition on March 4, 2024. *See* ECF 668. Defendants filed their reply on

¹ Defendants YouTube, Snap, and TikTok joined Meta’s motion to dismiss Count 7 of the PI Plaintiffs’ Amended Master Complaint. *See* ECF 519. The AGs and PI Plaintiffs opposed the motions. *See* ECF 599;600).

March 25, 2024. *See* ECF 723. The Defendants and SD/GE Plaintiffs will be prepared to argue this motion during the May 17, 2024, CMC. *See* ECF 728, CMO No. 12 at 6 (setting hearing for May 9); ECF 797 (continuing hearing to May 17).

Pursuant to CMO No. 13 (at 5), Defendants and the SD/GE Plaintiffs are meeting and conferring as to the appropriate legal standards applicable in Utah and Arizona and, should they agree, will file a joint stipulation on the docket. *See* CMO 13 (ECF 780).

II. Status Report on Bellwether Selection and Plaintiff Fact Sheets

For an abundance of clarity, all references to Plaintiffs throughout Section II. refer to the PI/SD Plaintiffs or subgroups thereof.

A. Personal Injury Plaintiffs

Bellwether Selection. The PI/SD Plaintiffs and Defendants submitted their PI and SD bellwether selections on April 15, 2024. The PI Plaintiffs subsequently dismissed with prejudice or asserted *Lexecon* objections in three of Defendants' six PI picks. By May 17, 2024, all PI Plaintiffs must assert their position on *Lexecon*, with Defendants then permitted to select three replacement PI bellwether cases from the remaining cases by May 22, 2024. CMO 13 (ECF 780) at 4.

Plaintiff Fact Sheets. Pursuant to the Court's April 10, 2024 Order (ECF 748), 45 PI Plaintiffs were required to provide PFSs by May 8, 2024. Of those 45 Plaintiffs, 24 Plaintiffs failed to submit a PFS. Plaintiffs note that the large majority of the 24 PI Plaintiffs with outstanding PFSs have informed Defendants of the status of their efforts to complete them, advising that in many instances their clients have not been reachable. Defendants intend to move the Court to dismiss those 24 cases pursuant to Rule 41(b).

Defendants' Further Position:

On May 3, Defendants learned that a fourth PI bellwether case selected by Defendants would be unilaterally removed from the bellwether pool when counsel for bellwether Plaintiff B.S. o/b/o D.D. informed Defendants that D.D. intends to voluntarily dismiss his case with prejudice, offering no explanation for his failure to do so earlier, before the Court adopted his case as part of the bellwether pool in CMO 13. *See* Exhibit A.

Through these dismissals and *Lexecon* objections, Plaintiffs have stricken 67% of Defendants' bellwether discovery selections. *See B.S. o/b/o D.D. v. Meta Platforms, Inc.*, et al., No. 4:22-cv-06495; *Jonathan Casteel v. Meta Platforms, Inc.*, et al., No. 4:22-cv-06423; *Klinten Craig v. Meta Platforms, Inc.*, et al., No. 4:22-cv-05890; *Dymand McNeal v. Meta Platforms, Inc.*, et al., No. 4:23-cv-01092. In so doing, Plaintiffs have removed all male plaintiffs from the pool – a factor this Court considered in CMO 13.²

Defendants should not be unfairly prejudiced by these dismissals, *Lexecon* objections, and other tactics. Defendants will make their three replacement bellwether picks by the May 22 deadline ordered in CMO 13, but further request the following:

1. To discourage similar tactics, Defendants ask that the Court provide Defendants with one additional strike of cases from the bellwether discovery pool;³
2. Defendants request that they be permitted to begin discovery on their replacement picks immediately upon selection on May 22;⁴ and
3. Defendants request that their deadline to complete fact discovery of all PI bellwether Plaintiffs be extended by five weeks (to January 24, 2025), as Defendants have already lost 33 days (between April 19 and May 22) from an already-compressed eight-month schedule for the completion of fact discovery for one-third of the bellwether pool. *See* CMO 13 at n.2 (“[F]urther dismissals of bellwether-selected cases may disrupt and delay

² In addition, as the Court knows, Defendants sought relief in the form of an administrative motion when Plaintiffs missed the PFS submission deadline for 37 cases. Meanwhile, Plaintiffs unilaterally accelerated cases for bellwether selection by selectively filing PFSs for certain cases early and then selecting them as bellwethers. For example, Plaintiffs filed the Short Form Complaint *and* the PFS in *Rodriguez*—a case involving a completed suicide—on April 1 (the last date for bellwether eligibility) and then selected it as a bellwether.

³ In the meantime, Defendants will be prepared to replace D.D. with a fourth bellwether replacement case when they identify their other three replacement picks on May 22, in accordance with CMO 13. To be clear, Defendants would exercise this replacement pick only if the Court does not grant their request for an additional strike.

⁴ Contrary to Plaintiffs' suggestion below, the Court has authorized the commencement of discovery only as to the now-eight “surviving proposed PI bellwethers.” CMO 13 at 4.

the process of this MDL.”).⁵ Alternatively, the Court should assess the total delay caused by this disruption in the bellwether selection process in conjunction with the June CMC, after the bellwether replacement process is complete.

Plaintiffs’ counsel’s argument below that they “simply cannot make a representation that every Plaintiff that Defendants wish to pursue as a bellwether will ‘go the distance’” is unacceptable. Either their clients are prepared to prosecute their cases, or they are not. MDLs are not intended to be “park and rides”; if any Plaintiff is unwilling to proceed “because the prospect of a trial (and one potentially far away from home) is overwhelming,” they should make that known now and dismiss their case (if they do not assert *Lexecon*), rather than remain in this MDL. By filing and continuing to prosecute their claims, Plaintiffs and their counsel certify that they have a good-faith factual and legal basis for their claims, and an actual case or controversy with Defendants that they intend to pursue. The fact that they are part of an MDL has no bearing on that requirement, whether they are selected as bellwether plaintiffs or not. Indeed, it was through filing hundreds of lawsuits on behalf of their clients that Plaintiffs’ counsel were able to obtain the benefits of this MDL in the first place. Their abuse of that process should not be countenanced.

Plaintiffs’ Further Position:

Defendant’s assertion that Plaintiffs are manipulating bellwether selection such that extraordinary relief is called for is disingenuous and lacks merit. The reality is that voluntary dismissals⁶, along with *Lexecon* objections, are part and parcel of any MDL bellwether process. The bellwether selection stage constitutes an important inflection point in each client’s case. Sometimes, not unreasonably, clients may determine that they cannot proceed to trial—because their life circumstances

⁵ The fact that Judge Kuhl ordered (over Defendants’ objection) a more compressed bellwether plaintiff discovery schedule in the JCCP, as Plaintiffs observe, has no bearing on whether Defendants should be granted additional time to conduct discovery of the bellwether Plaintiffs *in this MDL*, when the Court’s original trial schedule was premised on bellwether selections being finalized by April 19. Defendants address Plaintiffs’ false accusation that they have delayed Plaintiffs’ efforts at obtaining discovery in Section III below.

⁶ Defendants did not oppose the dismissal with prejudice of Plaintiff B.S. o/b/o D.D. This is not surprising given such dismissals are to their benefit, and they will have a replacement pick regardless.

1 may not permit the stress and strain of discovery, because the prospect of a trial (and one potentially far
2 away from home) is overwhelming, or simply because they are young and scared. MDL leadership
3 simply cannot make a representation that every Plaintiff that Defendants wish to pursue as a bellwether
4 will “go the distance.” That said, MDL leadership has and will continue operating in good faith and do
5 everything within their control to minimize the prospect of future dismissals.

6 Second, Defendants' insinuation that Plaintiffs “unilaterally accelerated cases” as part of a self-
7 serving strategy in the bellwether selection process lacks substance. Their argument centers on the fact
8 that one of Plaintiffs' selections, Rodriguez, filed on the April 1, 2024 deadline, which they present as
9 evidence of this alleged self-serving scheme. However, Defendants fail to note that the five other
10 Plaintiff picks filed a year prior to the deadline. Moreover, MDL leadership played no role in the timing
11 of the Rodriguez filing and had no communication with counsel for this Plaintiff about the case until
12 after the April 1 deadline when the case was being considered for the bellwether pool.

13 As to the relief sought by Defendants, the Court has already articulated processes that should
14 adequately protect Defendants' interests. First, the Court has mitigated instability in the bellwether pool
15 by setting a May 17 deadline for assertion of *Lexecon* objections. Second, the Court has directed that
16 Defendants can make replacement picks by May 22. As Defendants acknowledge (albeit in a footnote),
17 they can and will be prepared to make all *four* replacement picks by that date. Third, Defendants are
18 already entitled to begin discovery on their replacement picks immediately upon selection on May 22.
19 (Defendants request this as “relief” but Plaintiffs already understand this to be the default—indeed,
20 Defendants have already begun serving voluminous discovery on the preexisting bellwether picks.)

21 Defendants' additional requests for relief are unnecessary and disproportionate. Their request for
22 an additional strike would unfairly punish all MDL Plaintiffs because one Plaintiff has exercised their
23 right to seek dismissal of their case. Not only is there nothing untoward about that dismissal (which is
24 that Plaintiff's right to seek under Rule 41, and which Defendants do not oppose), leveraging that
25 dismissal to punish Plaintiffs who had no control over that individual Plaintiff's decision is deeply
26 inequitable. Defendants' request to extend fact discovery likewise lacks a sound basis. The Court need
27 look no further than the JCCP to understand why. Bellwethers will not be selected in the JCCP until
28

June 17, 2024, and yet the JCCP court has indicated it may hold a trial as early as mid-June 2025 (4 months before the MDL). If Defendants can make that more abbreviated schedule work in the JCCP, there is no cause for added time in the MDL. Defendants' complaint is particularly unjustified given their transparent attempts to delay Plaintiffs' efforts at obtaining discovery, which have included an unwillingness to produce Snapshots and Defendant Fact Sheets for MDL bellwether plaintiffs even though Defendants are already obligated to do so in the JCCP, as set out further below. Relatedly, TikTok has rebuffed multiple requests for bellwether Plaintiffs' user data in contravention of its obligations under recently enacted federal law.⁷ Plaintiffs reserve their right to raise such issues with Judge Kang and the Court at a future date.

B. School District Plaintiffs

Bellwether Selection. Following the April 19 CMC, the SD Plaintiffs asserted *Lexecon* objections in two of Defendants' six SD picks. On April 29, 2024, Defendants identified six replacement picks pursuant to CMO No. 13 (ECF 780 at 3). On May 6, 2024, the SD Plaintiffs notified Defendants that three of the six replacement picks will not waive *Lexecon* and two replacement picks will waive *Lexecon*. The SD Plaintiffs did not provide the position on *Lexecon* objection for the sixth school district case, as was required by CMO No. 13, instead informing Defendants that the school district will not be able to provide its position on *Lexecon* before May 10. After the final replacement SD Plaintiff exercises its *Lexecon* rights, Defendants will then select their two replacement SD bellwether cases from the remaining cases. *Id.*

Plaintiff Fact Sheets. As of May 9, 2024, there are 152 individual school district Plaintiffs in this MDL. One hundred and one (101) SD Plaintiffs served PFSs by the respective deadline(s) set forth in

⁷ On April 24, 2024, President Biden signed into law the Protecting Americans from Foreign Adversary Controlled Applications Act ("the Act"). Section 2(b) of that Act states that TikTok "shall provide, upon request by a user of such application within the land or maritime borders of United States, to such user all the available data related to the account of such user with respect to such application. Such data shall be provided in a machine readable format and shall include any data maintained by such application with respect to the account of such user, including content (including posts, photos, and videos), and all other account information."

the Implementation Order (ECF 731). Since April 1, 2024, 31 school districts have served PFSs. Ten school districts failed to serve a PFS by the May 8, 2024 deadline set forth in the Court's April 10, 2024 Order (ECF 748). Ten SD Plaintiffs' PFSs are not yet due under the Court's orders.

On April 15, 2024, the Parties each filed temporary sealing motions (*see* ECF 756, ECF 757) regarding the submission of briefing on bellwether discovery pools, noting that the reasons for sealing would be addressed in a forthcoming omnibus motion. The temporary sealing motions were preliminarily granted on April 23, 2024 (*see* ECF 780, n.1). The Parties filed a stipulation extending the deadline for the filing of omnibus sealing motions or stipulations to May 6, 2024 in accordance with the Court's Order Setting Sealing Procedures (ECF 341), *see* ECF 804, and Plaintiffs made the sealing filing on May 6, *see* ECF 811.

III. Bellwether Discovery Coordination

For an abundance of clarity, all references to Plaintiffs throughout Section III. refer to the PI/SD Plaintiffs or subgroups thereof.

PI/SD Plaintiffs' Position:

As noted in the JCCP update below, under Judge Kuhl's guidance, the parties finalized a Defendant Fact Sheet ("DFS") and filed a Stipulation and Proposed Case Management Order to enter it on April 30th, attached here to as Exhibit C. Per that Proposed Order, DFSs are to be completed by Defendants by May 31 for any JCCP personal injury plaintiff who submitted, by May 1, a Plaintiff Preservation Form and/or User Account Confirmation and Consent Form⁸—over 400 plaintiffs.⁹ In addition, Judge Kuhl has ordered that Defendants provide account preservation "snapshots" for the 24 personal injury plaintiffs selected for the JCCP bellwether pool within two days of their selection, by June 19th.

⁸ The Plaintiff Preservation Form and User Account Confirmation and Consent Form have also been entered in the MDL (*see* ECF 269, 269-1; ECF 616).

⁹ There is variation in the extent of DFS data Defendants must provide according to the timing of when a Plaintiff provides these forms, as reflected in the footnotes of Exhibit C, but DFSs must be provided for all Plaintiffs who provided Preservation or Confirmation Forms by May 31, 2024.

1 PI/SD Plaintiffs have met and conferred with Defendants seeking their agreement to provide the
 2 same for the twelve Personal Injury Plaintiffs selected as MDL bellwethers on a similar timeline, to
 3 promote efficient discovery and in keeping with the courts' guidance that the JCCP court will address
 4 such standardized plaintiff-side discovery, as occurred with the PFSs and associated forms. Defendants
 5 have not yet agreed to do so, with some taking the position that Plaintiffs here must instead propound
 6 requests for production¹⁰ for the entire universe of bellwether Plaintiff-specific information they may
 7 ultimately seek, and then finalize meet and confer on same, as a prerequisite to obtaining even the same
 8 basic and highly relevant DFS and snapshot information that Judge Kuhl simply ordered be provided.
 9 Should Defendants refuse to adopt the procedure ordered by the JCCP to timely provide DFS and
 10 snapshot data for the limited universe of twelve MDL bellwethers, Plaintiffs anticipate filing an
 11 Administrative Motion seeking same in the coming days and have so advised Defendants.

12 **Defendants' Position:**

13 Plaintiffs conflate the requirements of the bellwether selection process adopted by Judge Kuhl
 14 with the requirements here. Judge Kuhl ordered Defendants to produce the DFS for eligible PI plaintiffs
 15 in part because, under the JCCP's random selection process, the parties can use such information to
 16 argue representativeness of the bellwethers. Here, though, there is no bellwether-related need for a DFS.
 17 Instead, this is plainly a discovery dispute that belongs before Magistrate Judge Kang.

18 Yet, since bellwether PI Plaintiffs were selected on April 19 and the Court opened discovery
 19 with respect to those Plaintiffs' cases, Plaintiffs have not propounded any discovery requests on
 20 Defendants specific to those bellwether cases. The Parties first met and conferred on these recently-
 21 raised discovery issues on May 8. Defendants have repeatedly explained to Plaintiffs that they will
 22 produce relevant account captures for the PI bellwether Plaintiffs' accounts, but that Plaintiffs need to
 23 follow the Federal Rules of Civil Procedure and properly propound discovery requests seeking such
 24 production. Certain Defendants expect to be in a position to produce such account captures before the
 25

26 ¹⁰ While Plaintiffs maintain that RFPs should not be required for Plaintiffs to obtain DFS and Snapshot
 27 data--which the JCCP court ordered be produced without this hurdle,--given Defendants' position,
 28 Plaintiffs have propounded same to preserve their rights.

30-day deadline. But Plaintiffs cannot supplant the requirements of Rule 34 through manufactured urgency.

Defendant Fact Sheets are, in effect, written discovery under the FRCP. Had Plaintiffs served Rule 34 requests seeking production of the data in the JCCP DFS, Defendants may have been able to produce such data at the same time as they will produce JCCP DFS data, on May 31, 2024. Plaintiffs, however, did not even raise the possibility of such a production until it was too late for Defendants to include additional data in the production. Due to the burdens associated with producing this data, Defendants will not be able to produce it in the MDL until after the list of 12 MDL PI bellwether plaintiffs is finalized. But if Plaintiffs serve RFPs requesting that data, Defendants will respond to those RFPs consistent with the Federal Rules and meet and confer with Plaintiffs.¹¹

Plaintiffs have articulated no reason that this issue—which was inserted into this CMC Statement on the day of filing and as to which the Parties clearly need to confer further—is an emergency requiring expedited briefing and extraordinary relief. The requirements of Rule 34 should not be ignored.

Finally, Plaintiffs’ assertion in Section II.1.A. above that “TikTok has rebuffed multiple requests for bellwether Plaintiffs’ user data . . . under recently enacted federal law” is factually inaccurate, legally incorrect, and procedurally improper. TikTok is not in violation of the law, which in any event does not create a private right of action and assigns exclusive authority to the Attorney General to enforce. In the meantime, TikTok will be working with Plaintiffs and the other defendants on the process for the production of user data in this MDL, as described above.

¹¹ As one example of the timing issues, for accounts first identified after February 27, 2024 and before April 22, 2024, as the Meta DFS and the entered JCCP DFS implementation order reflect, Meta is only able to produce in the JCCP DFS data covering a recent 90-day period. Producing older data for accounts identified after February 27, 2024, will require substantial effort and time (likely two months or more). One of the PI bellwether cases was not filed until April 1, 2024, and Meta expects that Plaintiffs will ask for that historical data that has not yet been extracted. To the extent other of the PI bellwether cases were also filed more recently, Meta will need to extract all historical data at the same time to minimize burdens. Similarly, for Defendant Snap, producing certain older DFS data requires substantial time and effort and cannot be accomplished by May 31, 2024. To the extent Plaintiff also seek other Plaintiff-specific data, it would need to be pulled at the same time to minimize burden. Extracting historical data is a hugely burdensome endeavor regardless of the amount of data points being extracted, and it is both extremely inefficient and very costly to do it in a piecemeal fashion.

IV. YouTube: Amendments to Complaints that Add New Defendants

For an abundance of clarity, all references to Plaintiffs throughout Section IV. refer to the PI/SD Plaintiffs or subgroups thereof.

YouTube's Position:

Following the hearing on bellwether selection and the most recent status conference before this Court, Plaintiffs' counsel sent correspondence to certain Defendants requesting to amend multiple cases by, among other things, adding parties. In particular, Plaintiffs represented by Beasley Allen seek to amend approximately 14 personal injury cases to add the YouTube Defendants ("YouTube"), even though one of those cases had already been selected by the Court as a bellwether and the Plaintiffs in several of the other cases did not allege any injury from YouTube in their short-form complaints or in their plaintiff fact sheets, and some had submitted fact sheets stating they had not used YouTube.¹² Plaintiffs did not even provide notice to YouTube of these proposed amendments, and they were only brought to YouTube's attention by the existing Defendants in those cases.

Pursuant to Case Management Order No. 13, the Court held that it "must review the propriety of each motion to amend an SFC on a case-by-case basis." ECF 780 at 3. Given that bellwether discovery cases have now been selected and additional bellwether cases will be selected in short order, the Court drew a material distinction between (1) motions to amend that simply clarify an existing short-form complaint and (2) those that seek to add a defendant. *Id.* To effectuate that guidance, YouTube seeks to have the Court adopt a straightforward protocol that would give all parties the ability to consider all proposed amendments, interpose reasonable objections, and have any disputes resolved by the Court in a timely manner that minimizes the need for elaborate motion practice—all without changing any of the legal standards that govern whether any given amendment should actually be allowed.

YouTube proposed such a protocol, and then met and conferred with Plaintiffs to discuss, but Plaintiffs have refused to agree to it. Instead, Plaintiffs have taken the position that under Fed. R. Civ.

¹² These cases are *Clevenger*, No. 22-cv-6457; *Copelton*, No. 22-cv-6165; *Melton*, No. 22-cv-6627; *Murden*, No. 22-cv-5889; *Amacker*, No. 22-cv-6150; *Craig*, 22-cv-05890; *Estevanott*, No. 22-cv-06080; *Haywood*, No. 22-cv-06429; *Isaacs*, No. 22-cv-05885; *Lombardo*, No. 22-cv-07092; *Naber*, No. 22-cv-06832; *Newberry*, No. 22-cv-06460; *Ortiz*, No. 22-cv-06458; and *Thacker*, No. 22-cv-06497.

1 P. 15, they may unilaterally add non-party Defendants—no matter the circumstances and even after
2 bellwether selection—so long as they have consent of the existing Defendants to the case, without
3 giving either notice to the proposed to-be-added-party or an opportunity for the to-be-added-party to
4 intervene and oppose the amendment under Rule 24. That is neither efficient nor fair. Particularly given
5 the complex interplay between bellwether consideration and the amendment process in this MDL, a
6 Defendant that is party to the MDL should be given notice and an opportunity to intervene and object to
7 proposed amendments that seek to add that Defendant to a given SFC.

8 This principle is especially important for cases previously selected for the bellwether discovery
9 pool. Here, one of the cases where Plaintiffs now seek to add the YouTube Defendants (*Clevenger*) is a
10 personal injury case already selected by the Court as a bellwether. It would be prejudicial to allow
11 Plaintiffs to change the defendants in such a case, after Defendants selected it based in part on the
12 overall composition of the MDL personal injury cases and the reasonable assumption that each of those
13 cases involved only the Defendants that Plaintiffs had actually named. Indeed, the Court held a hearing
14 on April 19 to discuss issues that may impact the selection process, yet this proposed amendment was
15 never raised.

16 Plaintiffs are also wrong that the Federal Rules prevent a to-be-added Defendant from
17 challenging an amendment. To the contrary, Rule 24 gives a to-be-added Defendant precisely that right.
18 Courts routinely grant motions to intervene so that to-be-added Defendants can challenge amendments
19 that seek to name them as a party. *See, e.g., Wang v. Zymergen Inc.*, No. 21-CV-06028-PCP, 2024 WL
20 576306, at *2 (N.D. Cal. Feb. 13, 2024) (applying rule and recognizing that there are certain arguments
21 against amendment, such as “delay and prejudice arguments,” that “could not be raised in a subsequent
22 motion to dismiss”); *Auto-Owners Ins. Co. v. Tabby Place Homeowners Ass’n, Inc.*, No. CV421-346,
23 2022 WL 17327497, at *1 (S.D. Ga. Nov. 29, 2022) (applying rule). YouTube thus seeks not to avoid
24 the Federal Rules, but to implement them, while avoiding the inefficiency and delay of having to burden
25 the Court with formal motions practice under Rule 24 for each of Plaintiffs’ objectionable proposed
26 amendments.

1 To be clear, YouTube does not object to all of Plaintiffs' proposed amendments. But there are a
 2 smaller subset of proposed amendments to which YouTube does object, including on grounds of undue
 3 delay, prejudice, and futility. This includes cases where the Plaintiff has already asserted under oath (in
 4 connection with the Plaintiff Fact Sheet and appendices) that he or she (1) has not used YouTube and/or
 5 (2) claims no harm from YouTube. For instance, Plaintiff in *Clevenger* filed her action in August 2022.
 6 YouTube was not named. Plaintiff then submitted a short form complaint on April 4, 2023; Plaintiff
 7 identified no YouTube usage contributing to her injuries. On March 13, 2024, Plaintiff in *Clevenger*
 8 uploaded a PFS and a signed declaration in which she asserted she had not used YouTube. That was
 9 the operative PFS when *Clevenger* was selected by Defendants as a bellwether. On May 7, 2024,
 10 Plaintiff uploaded a First Amended PFS and signed declaration, again asserting she had not used
 11 YouTube. But on May 8, 2024, after receiving Defendants' exchange of this Joint Statement, Plaintiff
 12 uploaded a Second Amended PFS alleging YouTube usage for the first time and that her "peak"
 13 YouTube usage exceeds her peak usage of any other Defendants' platform.¹³ YouTube has a right under
 14 the Federal Rule 24 to intervene in such a case for the purposes of opposing amendment, but it wishes to
 15 spare the Court and the parties the burden of having to file formal motions in each such case.

16 Instead, for efficiency, to avoid piecemeal motions to intervene under Rule 24, and to effectuate
 17 CMO No. 13, YouTube respectfully asks the Court to adopt the [Proposed] Order Governing
 18 Amendments to Short-Form Complaints for Filed Cases, attached hereto as Exhibit B. The proposed
 19 Order considers the Court's guidance in CMO No. 13 regarding review of proposed amendments.
 20 YouTube believes the proposed Order creates an orderly and fair process that will reduce the burden on
 21 the parties and the Court without changing any substantive standards for amendment. This proposal
 22 would create efficiencies because the Court would not have to address separate motions to intervene in
 23 each case where an amendment seeks to add a new Defendant. Instead, Plaintiffs would simply give
 24 _____

25 ¹³ Plaintiffs' contention that YouTube was somehow on notice that the Plaintiff in *Clevenger* may seek
 26 leave to add new parties after bellwether selection, merely because she identified a YouTube account in
 27 a user account preservation form, makes no sense. Plaintiff in *Clevenger* represented under oath that she
 28 did not use YouTube or suffer any harm from YouTube. Her argument undermines the very purpose
 behind the heavily-negotiated requirement for Plaintiffs to submit SFCs, PFSs, and platform-specific
 appendices.

1 notice to all Defendants (including non-party Defendants) of any proposed amendment that would add a
2 new party, and, in the absence of consent from all Defendants (including the to-be-added Defendant).
3 Plaintiffs would explain the basis for the amendment to the Court, any objecting Defendant would have
4 the ability to oppose, and the Court would rule on the amendment under the standards provided by the
5 Federal Rules. This process in no way prejudices Plaintiffs, and it will create greater order, efficiency,
6 and coherence to the amendment process.

7 **PI/SD Plaintiffs' Position:**

8 The process for amending SFCs prior to a Court-ordered deadline is governed by Rule 15(a) of
9 the Federal Rules of Civil Procedure, under which Plaintiffs may amend their complaints either with
10 leave of court or by consent of the named Defendants. *See* Fed. R. Civ. P. 15(a)(2) (a party may amend a
11 pleading "with the opposing party's written consent or the court's leave"). Consistent with Rule 15,
12 Plaintiffs who intend to amend their SFCs have been requesting consent from the named Defendants in
13 their cases and, in many of those cases, have obtained that consent and filed amended SFCs.

14 Only YouTube has raised objections with this otherwise routine Rule 15 procedure. As is often
15 the case in mass tort MDLs, as more specific information about Plaintiffs' cases has come to light during
16 the PFS process, some Plaintiffs have identified bases to include additional Defendant(s). The PFS was
17 in fact designed to more fully flesh-out the extent to which Plaintiffs have used each platform and its
18 connections to the harms they have suffered, so it is unsurprising that some Plaintiffs have now
19 identified platform usage that warrants amending their SFCs to name additional Defendants. This is
20 particularly the case given that many Plaintiffs may have started using these products years ago at quite
21 young ages and may no longer have access to some of their accounts, and in any event have far less
22 information regarding their account usage at this stage than Defendants do.

23 YouTube seeks to disrupt the efficiency with which this standard amendment process has thus
24 far proceeded by adding a hurdle beyond the requirements of Rule 15, the sole purpose of which is to
25 give unnamed Defendants the right to prevent Plaintiffs from amending their SFCs without leave of
26 court, even when the named Defendants consent. Rather than simply amending by consent of all named
27 parties as Rule 15(a)(2) provides, this would result in Plaintiffs being forced to file motions for leave to
28

1 amend when a yet-to-be-named Defendant objects to a proposed amendment. Far from offering
2 efficiency, YouTube's proposal will serve only to clog up the amendment process.

3 YouTube offers no authority for the extraordinary relief it requests. It claims its proposal
4 effectuates guidance in CMO 13, but CMO 13 denied Defendants' request for a global prohibition on
5 amending SFCs in proposed bellwether cases and recognized that doing so would abrogate the standard
6 governing amendments to pleadings. ECF 780 at 3. This is consistent with Ninth Circuit guidance that
7 MDL courts may not impose burdens on amending pleadings beyond the traditional standards set forth
8 under Rule 15. *See In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 701 (9th Cir. 2011) ("By denying
9 leave to amend on the basis of the court's prior CMO, the court applied an incorrect legal standard to
10 Plaintiffs' motion. Such an error constitutes an abuse of discretion."). YouTube's request would impose
11 such additional burdens, contrary to Ninth Circuit authority.¹⁴

12 YouTube has likewise failed to articulate any substantial prejudice that justifies the inefficiencies
13 and burdens on amendments that its proposal would impose. YouTube claims that some undefined
14 subset of Plaintiffs in a handful of cases it identifies as seeking to add YouTube did not include
15 YouTube usage in their PFSs, but in fact the operative PFS in each of the cases does include substantial
16 YouTube usage. While the *Clevenger* PFS initially did not identify YouTube usage, the Plaintiff had
17 identified a YouTube account in Plaintiff Preservation Forms served on YouTube both well before and
18 after serving her initial PFS, putting YouTube on notice, and promptly amended her PFS to include
19 YouTube upon becoming aware of the oversight. Discovery on the bellwether Plaintiffs remains in its
20 infancy, undercutting any claim of prejudice, but in any event, YouTube is already in possession of
21 much more extensive data on Plaintiffs' accounts than Plaintiffs are.

23 ¹⁴ YouTube cites two inapposite cases, where the plaintiff apparently did not obtain consent of the
24 named defendants and, instead, moved the court for leave to amend. *Wang v. Zymergen Inc.*, No. 21-
25 CV-06028-PCP, 2024 WL 576306, at *2 (N.D. Cal. Feb. 13, 2024); *Auto-Owners Ins. Co. v. Tabby*
26 *Place Homeowners Ass'n, Inc.*, No. CV421-346, 2022 WL 17327497, at *1 (S.D. Ga. Nov. 29, 2022).
27 The courts permitted unnamed Defendants to intervene and join in the briefing. *Wang*, 2024 WL
28 576306, at *2; *Auto-Owners Ins. Co.*, 2022 WL 17327497, at *1. Neither case allowed an unnamed
defendant to intervene and oppose an amendment where the plaintiff had the consent of all named
defendants, the relief YouTube now seeks.

1 YouTube's suggestion that the bellwether process was skewed because a limited number of
 2 Plaintiffs have since sought to add it as a Defendant—a situation for which no other Defendant has
 3 sought a departure from the Federal Rules—is likewise unfounded. If anything, to the extent that the
 4 number of claims against YouTube has increased, that would suggest that a larger portion of bellwethers
 5 should likewise involve it, an outcome not sought by YouTube.

6 None of YouTube's arguments have merit, but they are also inapposite, because the Federal
 7 Rules do not provide unnamed defendants the right to vet the merits of plaintiffs' claims as a condition
 8 to amending an SFC. *See* Rule 15(a)(2) (plaintiffs may amend "with the opposing *party's* written
 9 consent") (emphasis added). This is true regardless of whether Defendants have selected one of those
 10 cases as a bellwether. *See* ECF 780 at 3 ("the Court must review the propriety of each motion to amend
 11 an SFC on a case-by-case basis"). In summary, YouTube seeks extraordinary relief that would slow the
 12 process for amending SFCs, impose additional burdens on Plaintiffs, and grant YouTube rights beyond
 13 those provided under the Federal Rules. The relief requested by YouTube is neither warranted nor
 14 appropriate and should be denied.

15 **V. Discovery Management Conference Statement**

16 The Parties' Discovery Management Conference Statement is being filed on May 10, 2024. The
 17 Parties will supply a copy to Judge Gonzalez Rogers's chambers by email after the filing.

18 **VI. JCCP Status Update**

19 For an abundance of clarity, all references to Plaintiffs throughout Section VI. refer to the PI/SD
 20 Plaintiffs or subgroups thereof.

21 On April 24, 2024, Judge Kuhl held a CMC and an informal conference with the parties to
 22 discuss the categories for random selection of the PI bellwether discovery pool in the JCCP. Judge Kuhl
 23 will randomly select 24 PI plaintiffs (from the pool of plaintiffs who have submitted PFSs by May 16,
 24 2024) for bellwether discovery on June 17, 2024. To allow the parties to assess those plaintiffs for
 25 representatives of the overall plaintiff population, Judge Kuhl ordered Defendants to produce account
 26 preservation snapshots for those plaintiffs by June 19, 2024. By June 21, 2024, plaintiffs will advise
 27 Defendants and the Court if any plaintiff from the bellwether discovery pool selections will not be going
 28

1 forward with their case and, on June 25, 2024, the parties will file briefs addressing any plaintiff selected
2 for the bellwether discovery pool. The Court will hear arguments on the issue of whether any bellwether
3 discovery pool plaintiff should be excluded as an “outlier” on June 27, 2024. Any plaintiffs found to be
4 “outliers” will be replaced via another random draw on that date. In December 2024, Judge Kuhl will
5 narrow the bellwether pool to 10-12 cases for trial. Judge Kuhl set a deadline of December 6, 2024, for
6 the completion of bellwether fact discovery, with expert discovery to follow the same timeline as expert
7 discovery in the MDL.

8 Also at the April 24, 2024 CMC, Judge Kuhl ordered the parties to meet and confer to discuss
9 processes for addressing PFS deficiencies, including dismissals.

10 The parties also reached agreement on a stipulated implementation order for Defendant Fact
11 Sheets. On April 30, 2024, the parties filed their Stipulation and Proposed Case Management Order for
12 implementation of the personal injury Defendant Fact Sheet (“DFS”) which awaits Judge Kuhl’s
13 signature.

14 Finally, Judge Kuhl heard continued argument on Defendants’ motion to strike third-party
15 predator, CSAM, and “challenges” allegations from the JCCP Personal Injury Plaintiffs’ Master
16 Complaint and from certain short-form complaints on April 24, 2024.

17 The JCCP’s next status conference is May 13, 2024, and Judge Kuhl will hear argument on
18 Defendants’ Demurrer and motion to strike Plaintiffs’ School District Complaints the same day.

19
20 Respectfully submitted,

21 DATED: May 10, 2024

By: /s/ Previn Warren

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ATTESTATION

I, Previn Warren, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

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